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8
9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

11
12 THOMAS BARBOSA, DECEASED,
by and through his Co-Successors in
13 Interest, LUPITA BARBOSA,
Individually, and as mother and Next
14 Friend for K.B. and T.B., minors;
ANGELICA MARTINEZ-VERA,
15 individually; and KATHLEEN HOOD,
individually,

16 Plaintiffs,

17 v.

18 SHASTA COUNTY, a public entity;
19 SHASTA COUNTY SHERIFF-
CORONER ERIC MAGRINI, in his
20 individual and official capacity; and
DOES 1 through 20, individually,
21 jointly and severally,

22 Defendants.

Case No. 2:20-cv-02298-JAM-DMC
District Judge, John A. Mendez;
Magistrate Judge, Dennis M. Cota

**STIPULATION AND JOINT
REQUEST FOR ENTRY OF
PROTECTIVE ORDER**

Complaint Filed: 11/17/20
Trial Date: TBD

23
24 **TO THE HONORABLE COURT:**

25 By and through their counsel of record in this action, plaintiffs THOMAS
26 BARBOSA, Deceased, by and through his Co-successors in Interest, LUPITA
27 BARBOSA, individually and as mother and Next Friend for K.B. and T.B., minors;
28 ANGELICA MARTINEZ-VERA, individually, and KATHLEEN HOOD,

1 individually (“Plaintiffs”) and defendants SHASTA COUNTY and SHASTA
2 COUNTY SHERIFF ERIC MAGRINI (“Defendants”) – the parties – hereby stipulate
3 for the purpose of jointly requesting that the honorable Court enter a protective order
4 re confidential documents in this matter [and pursuant to Fed. R. Civ. P. 5.2, 7, and
5 26, as well as U.S. Dist. Ct., E.D. Cal., Local Rules 141, 141.1, 143, 230 and/or 251;
6 and any applicable Orders of the Court] – as follows:

7 **1. A. PURPOSES AND LIMITATIONS**

8 Disclosure and Discovery in this action are likely to involve production of
9 confidential, proprietary, or private information for which special protection from
10 public disclosure and from use for any purpose other than prosecuting this litigation
11 may be warranted. Accordingly, the parties hereby stipulate to and petition the Court
12 to enter the following Stipulated Protective Order. The parties acknowledge that this
13 Order does not confer blanket protections on all disclosures or responses to discovery
14 and that the protection it affords from public disclosure and use extends only to the
15 limited information or items that are entitled to confidential treatment under the
16 applicable legal principles. The parties further acknowledge, as set forth in Section
17 12.3, below, that this Stipulated Protective Order does not entitle them to file
18 confidential information under seal; Eastern District Local Rules 141, 141.1, 143, and
19 251 set(s) forth the procedures that must be followed and reflects the standards that
20 will be applied when a party seeks permission from the court to file material under
21 seal.

22 **B. GOOD CAUSE STATEMENT**

23 This action is likely to involve confidential peace officer personnel file
24 documents, plaintiff’s medical records, as well as personal identifying information of
25 third party witnesses (i.e. addresses, telephone numbers, etc.), for which special
26 protection from public disclosure and from use for any purpose other than prosecution
27 of this action is warranted. Such confidential and proprietary materials and
28 information consist of, among other things, personnel file information; plaintiff’s

1 confidential medical and/or psychotherapeutic treatment information; and personal
2 identifying information of any third party witnesses, otherwise generally unavailable
3 to the public, or which may be privileged or otherwise protected from disclosure under
4 state or federal statutes, court rules, case decisions, or common law.

5 Accordingly, to expedite the flow of information, to facilitate the prompt
6 resolution of disputes over confidentiality of discovery materials, to adequately
7 protect information the parties are entitled to keep confidential, to ensure that the
8 parties are permitted reasonable necessary uses of such material in preparation for and
9 in the conduct of trial, to address their handling at the end of the litigation, and serve
10 the ends of justice, a protective order for such information is justified in this matter.

11 It is the intent of the parties that information will not be designated as confidential for
12 tactical reasons and that nothing be so designated without a good faith belief that it
13 has been maintained in a confidential, non-public manner, and there is good cause
14 why it should not be part of the public record of this case.

15 **2. DEFINITIONS**

16 2.1 Action: This pending federal lawsuit in *Thomas Barbosa et al. v. Shasta County*
17 *et al.*, 2:20-cv-02298-JAM-DMC.

18 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
19 information or items under this Order.

20 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is
21 generated, stored or maintained) or tangible things that qualify for protection under
22 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
23 Statement.

24 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
25 support staff).

26 2.5 Designating Party: a Party or Non-Party that designates information or items
27 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

28 2.6 Disclosure or Discovery Material: all items or information, regardless of the

1 medium or manner in which it is generated, stored, or maintained (including, among
2 other things, testimony, transcripts, and tangible things), that are produced or
3 generated in disclosures or responses to discovery in this matter.

4 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent
5 to the litigation who has been retained by a Party or its counsel to serve as an expert
6 witness or as a consultant in this Action.

7 2.8 House Counsel: attorneys who are employees of a party to this Action. House
8 Counsel does not include Outside Counsel of Record or any other outside counsel.

9 2.9 Non-Party: any natural person, partnership, corporation, association, or other
10 legal entity not named as a Party to this action.

11 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
12 Action but are retained to represent or advise a party to this Action and have appeared
13 in this Action on behalf of that party or are affiliated with a law firm which has
14 appeared on behalf of that party, and includes support staff.

15 2.11 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
19 Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
25 “CONFIDENTIAL.”

26 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
27 Producing Party.

28

1 **3. SCOPE**

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied from
4 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
5 Material that reveal the source of the Protected Material or that reveal specific
6 information entitled to confidentiality as a matter of law; and (3) any testimony,
7 conversations, or presentations by Parties or their Counsel that might reveal Protected
8 Material. However, the protections conferred by this Stipulation and Order do not
9 cover the following information: (a) any information that is in the public domain at
10 the time of disclosure to a Receiving Party or becomes part of the public domain after
11 its disclosure to a Receiving Party as a result of publication not involving a violation
12 of this Order, including becoming part of the public record through trial or otherwise;
13 and (b) any information known to the Receiving Party prior to the disclosure or
14 obtained by the Receiving Party after the disclosure from a source who obtained the
15 information lawfully and under no obligation of confidentiality to the Designating
16 Party; (c) any information mentioned or referenced in a deposition or in other pretrial
17 or trial proceedings, unless such portions of testimony have been designated as
18 confidential pursuant to section 5.2(b) of this order.

19 Any use of Protected Material at trial shall be governed by the orders of the
20 trial judge. This Order does not govern the use of Protected Material at trial.

21 **4. DURATION**

22 Even after final disposition of this litigation, the confidentiality obligations
23 imposed by this Order shall remain in effect until a Designating Party agrees
24 otherwise in writing or a court order otherwise directs. Final disposition shall be
25 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
26 or without prejudice; and (2) final judgment herein after the completion and
27 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
28 including the time limits for filing any motions or applications for extension of time

pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) For information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that contains protected material. If only a portion or portions of the material on a page

1 qualifies for protection, the Producing Party also must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for inspection
4 need not designate them for protection until after the inspecting Party has indicated
5 which documents it would like copied and produced. During the inspection and before
6 the designation, all of the material made available for inspection shall be deemed
7 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
8 copied and produced, the Producing Party must determine which documents, or
9 portions thereof, qualify for protection under this Order. Then, before producing the
10 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
11 to each page that contains Protected Material. If only a portion or portions of the
12 material on a page qualifies for protection, the Producing Party also must clearly
13 identify the protected portion(s) (e.g., by making appropriate markings in the
14 margins).

15 (b) For testimony given in depositions that the Designating Party identify
16 the Disclosure or Discovery Material on the record, before the close of the deposition
17 all protected testimony.

18 (c) For information produced in some form other than documentary and for
19 any other tangible items, that the Producing Party affix in a prominent place on the
20 exterior of the container or containers in which the information is stored the legend
21 “CONFIDENTIAL.” If only a portion or portions of the information warrants
22 protection, the Producing Party, to the extent practicable, shall identify the protected
23 portion(s).

24 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure
25 to designate qualified information or items does not, standing alone, waive the
26 Designating Party’s right to secure protection under this Order for such material.
27 Upon timely correction of a designation, the Receiving Party must make reasonable
28 efforts to assure that the material is treated in accordance with the provisions of this

1 Order.

2 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

3 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a designation
4 of confidentiality at any time that is consistent with the Court's Scheduling Order and
5 associated deadlines.

6 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute resolution
7 process under Local Rule 251 et seq.

8 **6.3** The burden of persuasion in any such challenge proceeding shall be on the
9 Designating Party. Frivolous challenges, and those made for an improper purpose
10 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
11 expose the Challenging Party to sanctions. Unless the Designating Party has waived
12 or withdrawn the confidentiality designation, all parties shall continue to afford the
13 material in question the level of protection to which it is entitled under the Producing
14 Party's designation until the Court rules on the challenge.

15 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this
18 Action only for prosecuting, defending, or attempting to settle this Action. Such
19 Protected Material may be disclosed by any Party only to the categories of persons
20 and under the conditions described in this Order. When the Action has been
21 terminated, a Receiving Party must comply with the provisions of section 13 below
22 (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by all parties at a location
24 and in a secure manner that ensures that access is limited to the persons authorized
25 under this Order.

26 **7.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless otherwise
27 ordered by the court or permitted in writing by agreement of both the Designating
28 Party and Receiving Party(ies), all parties may disclose any information or item

1 designated “CONFIDENTIAL” only to:

2 **(a)** A Party’s Outside Counsel of Record in this Action, as well as employees
3 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
4 information for this Action;

5 **(b)** The officers, directors, and employees (including House Counsel) of the
6 Party to whom disclosure is reasonably necessary for this Action, including the
7 employees and agents of the Designating Party(ies) in the normal course of business
8 with due regard for the confidential nature of the information under this protective
9 order;

10 **(c)** Experts (as defined in this Order) and professional jury or trial
11 consultants of any Party to whom disclosure is reasonably necessary for this Action
12 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
13 A);

14 **(d)** The court and its personnel;

15 **(e)** Court reporters and their staff;

16 **(f)** Mock jurors, and Professional Vendors to whom disclosure is reasonably
17 necessary for this Action;

18 **(g)** The author or recipient of a document containing the information or a
19 custodian or other person who otherwise possessed or knew the information;

20 **(h)** In preparation for and during their depositions, witnesses, and attorneys
21 for witnesses, in the Action to whom disclosure is reasonably necessary, provided
22 they review the Stipulated Protective Order and will not be permitted to keep any
23 confidential information or items unless they sign the “Acknowledgment and
24 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
25 Party and any other Parties present at the deposition or ordered by the court. Pages of
26 transcribed deposition testimony or exhibits to depositions that reveal Protected
27 Material may be separately bound by the court reporter and may not be disclosed to
28 anyone except as permitted under this Stipulated Protective Order or as agreed by all

Parties; and

(i) Any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information

1 produced by Non-Parties in connection with this litigation is protected by the
2 remedies and relief provided by this Order. Nothing in these provisions should be
3 construed as prohibiting a Non-Party from seeking additional protections.

4 (b) In the event that a Party is required, by a valid discovery request, to
5 produce a Non-Party's confidential information in its possession, and the Party is
6 subject to an agreement with the Non-Party not to produce the Non-Party's
7 confidential information, then the Party shall:

8 (1) Promptly notify in writing the Requesting Party and the Non-Party that some
9 or all of the information requested is subject to a confidentiality agreement with a
10 Non-Party;

11 (2) Promptly provide the Non-Party with a copy of the Stipulated Protective Order
12 in this Action, the relevant discovery request(s), and a reasonably specific description
13 of the information requested; and

14 (3) Make the information requested available for inspection by the Non-Party, if
15 requested.

16 (c) If the Non-Party fails to seek a protective order from this court within 14
17 days of receiving the notice and accompanying information, the Receiving Party may
18 produce the Non-Party's confidential information responsive to the discovery request.
19 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
20 any information in its possession or control that is subject to the confidentiality
21 agreement with the Non-Party before a determination by the court. Absent a court
22 order to the contrary, the Non-Party shall bear the burden and expense of seeking
23 protection in this court of its Protected Material.

24 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Party learns that, by inadvertence or otherwise, it has disclosed Protected
26 Material to any person or in any circumstance not authorized under this Stipulated
27 Protective Order, the Party must immediately (a) notify in writing all Parties of the
28 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of

1 the Protected Material, (c) inform the person or persons to whom unauthorized
2 disclosures were made of all the terms of this Order, and (d) request such person or
3 persons to execute the “Acknowledgment and Agreement to Be Bound” that is
4 attached hereto as Exhibit A.

5 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
6 **PROTECTED MATERIAL**

7 When a Producing Party gives notice to Receiving Parties that certain
8 inadvertently produced material is subject to a claim of privilege or other protection,
9 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
10 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
11 may be established in an e-discovery order that provides for production without prior
12 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
13 parties reach an agreement on the effect of disclosure of a communication or
14 information covered by the attorney-client privilege or work product protection, the
15 parties may incorporate their agreement in the stipulated protective order submitted
16 to the court.

17 **12. MISCELLANEOUS**

18 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any person
19 to seek its modification by the Court in the future.

20 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this
21 Protective Order no Party waives any right it otherwise would have to object to
22 disclosing or producing any information or item on any ground not addressed in this
23 Stipulated Protective Order. Similarly, no Party waives any right to object on any
24 ground to use in evidence of any of the material covered by this Protective Order.

25 **12.3 Filing Protected Material.** Any Party that seeks to file under seal any
26 Protected Material must comply with Local Rule 141. Protected Material may only
27 be filed under seal pursuant to a court order authorizing the sealing of the specific
28 Protected Material at issue. If a Party's request to file Protected Material under seal is

1 denied by the court, then any Party may file the information in the public record unless
2 otherwise instructed by the court.

3 **13. FINAL DISPOSITION**

4 After the final disposition of this Action, as defined in paragraph 4, within 60
5 days of a written request by the Designating Party, each Receiving Party must return
6 all Protected Material to the Producing Party or destroy such material. As used in this
7 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
8 summaries, and any other format reproducing or capturing any of the Protected
9 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
10 must submit a written certification to the Producing Party (and, if not the same person
11 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
12 category, where appropriate) all the Protected Material that was returned or destroyed
13 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
14 compilations, summaries or any other format reproducing or capturing any of the
15 Protected Material.

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1 Notwithstanding this provision, Counsel are entitled to retain an archival copy
2 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
3 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
4 work product, and consultant and expert work product, even if such materials contain
5 Protected Material. Any such archival copies that contain or constitute Protected
6 Material remain subject to this Protective Order as set forth in Section 4
7 (DURATION).

8 **IT IS SO STIPULATED.**

9 DATED: January 6, 2021

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**

By: /s/ *Mildred K. O'Linn*

Mildred K. O'Linn, Esq.

Lynn L. Carpenter, Esq.

Attorneys for Defendants, SHASTA
COUNTY and SHASTA COUNTY
SHERIFF-CORONER ERIC
MAGRINI.

18 DATED: January 6, 2021

HADDAD & SHERWIN, LLP

By: /s/ *Michael J. Haddad*

Michael J. Haddad, Esq.

Julia Sherwin, Esq.

Teresa D. Allen, Esq.

Attorneys for Plaintiffs, THOMAS
BARBOSA (Deceased), LUPITA
BARBOSA, K.B., T.B., ANGELICA
MARTINEZ-VERA, and KATHLEEN
HOOD.

1 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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4 **Dated: March 25, 2021**



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6 _____
7 DENNIS M. COTA
8 UNITED STATES MAGISTRATE
9 JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that
I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Eastern District of California on
[date] in the case of Thomas Barbosa et al. v. Shasta County et al.; 2:20-cv-02298-
JAM-DMC. I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with
the provisions of this Order. I further agree to submit to the jurisdiction of the United
States District Court for the Eastern District of California for the purpose of enforcing
the terms of this Stipulated Protective Order, even if such enforcement proceedings
occur after termination of this action. I hereby appoint
_____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City/State where sworn and signed: _____

Printed name: _____

Signature: _____

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW